

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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RIGOBERTO RUIZ,

Plaintiff,

v.

Case No. \_\_\_\_\_

CONAGRA FOODS PACKAGED FOODS,  
LLC,

Defendant.

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**CONAGRA FOODS PACKAGED FOODS, LLC'S NOTICE OF REMOVAL**

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Defendant, ConAgra Foods Packaged Foods, LLC ("ConAgra" or "Defendant"), files this Notice of Removal, and hereby removes this action from the Walworth County Circuit Court, in the state of Wisconsin, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1442, and 1446. In support of this Notice of Removal, ConAgra states as follows:

1. Plaintiff filed his Complaint in the Walworth County Circuit Court, in the state of Wisconsin, on February 26, 2021. A copy of the Summons and Complaint is attached as **Exhibit A**.
2. ConAgra was served with the Summons and Complaint on March 4, 2021.
3. ConAgra has not been served with any process, pleadings, or orders in this action other than the Summons and Complaint that are attached as Exhibit A.
4. ConAgra timely removed this action, because it filed its Notice of Removal within thirty 30 days of service upon ConAgra. *See* 28 U.S.C. § 1446(b).

5. ConAgra's removal is proper, and the Court has jurisdiction over this matter, under three different theories: (a) diversity jurisdiction; (b) federal question jurisdiction; and/or (c) federal officer jurisdiction.

6. The Court has diversity jurisdiction because there is complete diversity of citizenship between Plaintiff and ConAgra, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. ConAgra is a limited liability company, also known as an LLC. "Citizenship of an LLC for purposes of the diversity jurisdiction is the citizenship of its members." *Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998).

8. ConAgra is a Delaware limited liability company with its principal place of business located in Nebraska. ConAgra's sole member is ConAgra Foods Packaged Foods Holdings, Inc., a Delaware corporation, and its principal place of business is located in Nebraska. For purposes of 28 U.S.C. §§ 1332, 1441, and 1446, ConAgra is therefore a citizen of Delaware or Nebraska, not a citizen of Wisconsin.

9. As represented in the Complaint (*see* Ex. A ¶ 1), Plaintiff is a resident of the State of Wisconsin. For purposes of 28 U.S.C. §§ 1332, 1441, and 1446, Plaintiff is therefore a citizen of Wisconsin.

10. Because Plaintiff and ConAgra are citizens of different States, under 28 U.S.C. § 1332, there is complete diversity of citizenship between the parties.

11. Although ConAgra disputes that it owes any money to Plaintiff, Plaintiff's Complaint alleges that ConAgra is responsible to Plaintiff for compensation for the wrongful death of his wife, Martha Amador De Ruiz, compensation for the injuries and damages suffered by Martha Amador De Ruiz prior to her death, as well as costs and disbursements, and attorneys'

fees. In addition, in part because plaintiffs in wrongful death cases often seek damages well in excess of \$75,000, and in part because of concerns about the size of jury awards for “loss of society and companionship” damages related to an adult’s wrongful death, the Wisconsin legislature placed a \$350,000 cap on “loss of society and companionship” damages awards. *See* Wis. Stat. § 895.04(4).

12. The amount in controversy therefore exceeds \$75,000, exclusive of interest and costs, by Plaintiff’s estimate. *See* 28 U.S.C. § 1332(a).

13. In addition to diversity jurisdiction, this Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

14. Plaintiff’s Complaint raises Wisconsin state law causes of action, and alleges that the injuries at issue occurred because ConAgra failed “to follow CDC guidelines and general advice” during the COVID-19 Global Pandemic.

15. Although ConAgra disputes Plaintiff’s allegations, because of Plaintiff’s allegations, the Public Readiness and Emergency Preparedness Act (the “PREP Act”) applies to Plaintiff’s claims. *See* 42 U.S.C. § 247d-6d.

16. The PREP Act therefore completely preempts Plaintiff’s state law claims, and gives rise to federal question jurisdiction under 28 U.S.C. § 1331. *See, e.g., Garcia v. Welltower OpCo Group, LLC*, Case No. SACV 20-02250JVS, 2021 WL 492581 (C.D. Cal. Feb. 10, 2021); *see also* Office of General Counsel of the Department of Health and Human Services Advisory Opinion No. 21-02 (Jan. 8, 2021).

17. Finally, the Court also has federal officer jurisdiction over this matter. *See* 28 U.S.C. § 1442.

18. During the COVID-19 Global Pandemic, the United States government designated ConAgra, a prominent member of the food processing and manufacturing sector, as “critical infrastructure.”

19. As critical infrastructure, ConAgra acted under the United States government and with federal authority to maintain its facilities, to support the food and agriculture sector of the United States economy, and to sustain the country’s critical food supply. The Court therefore also has federal officer jurisdiction over this matter. *See, e.g., Fields v. Brown*, Case No. 6:20-CV-00475, 2021 WL 510620 (E.D. Tex. Feb. 11, 2021).

20. For the reasons stated above, and given the timing set forth in Plaintiff’s Complaint, in addition to ConAgra’s other colorable defenses, the PREP Act gives ConAgra a colorable federal defense within the federal officer removal doctrine. *See* 28 U.S.C. § 1442(a).

21. Contemporaneously with the filing of this Notice of Removal, a copy of the Notice of Removal is being filed with the Walworth County Circuit Court, in the State of Wisconsin. *See* 28 U.S.C. § 1446(d). In addition, written notice of the filing of this Notice of Removal will be given to all parties.

**WHEREFORE**, Defendant, ConAgra Foods Packaged Foods, LLC, respectfully requests that this Court remove the above-captioned action to this Court.

Dated this 26th day of March, 2021.

*s/ Patrick M. Harvey*

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